IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

HAROLD KATLIN, Individually and on behalf of all others similarly situated,	:	CIVIL ACTION
v.	:	NO. 97-4450
DAVID E. TREMOGLIE, et al.	:	

MEMORANDUM

R.F. KELLY, J. SEPTEMBER 3, 1997

Plaintiff, Harold Katlin ("Katlin"), filed this class action law suit in the Philadelphia Court of Common Pleas on June 23, 1997. Katlin alleges that he, and others similarly situated, were treated by David E. Tremoglie ("Tremoglie"), a man practicing psychiatry without a license. At all relevant times, Tremoglie worked at the Bustleton Guidance Center ("Bustleton") as a psychiatrist. Katlin was referred to Bustleton by Keystone Health Plan East ("Keystone"), his health insurance provider, for psychiatric care. Greenspring Health Services and Psychresource also employed Tremoglie as a psychiatrist.

Keystone and the other Defendants (hereinafter collectively referred to as "Defendants") removed this case to federal court on the basis of federal question jurisdiction. Katlin has moved to remand the case back to the Philadelphia Court of Common Pleas. For the reasons that follow, Plaintiff's Motion is granted.

I. Discussion.

Plaintiff is the master of his claim, and if he chooses

not to assert a federal claim, although one is available, defendant cannot remove on the basis of federal question. The face of the complaint in question does not refer to federal law or to ERISA and therefore under ordinary circumstances Defendants cannot remove.

Here Defendants contend that state remedies have been preempted by the federal ERISA statute.

ERISA preemption alone, however, "does not convert [a] state claim into one arising under federal law." Dukes v. U.S. Healthcare, Inc., 57 F.3d 350, 355 (3rd Cir. 1995) cert. denied __ U.S. __, 116 S.Ct. 564 (1995)(citing Metropolitan Life Ins. Co. v. Taylor, 481 U.S. 58, 64 (1987). Claims preempted by section 514(a) are still subject to the "well-pleaded complaint rule." Dukes, 57 F.3d at 355. The "well-pleaded complaint rule" requires the face of Plaintiff's complaint to raise a federal question before removal to federal court. Id. at 355-54. Pre-emption is a defense, thus, it rarely appears on the face of Plaintiff's complaint. Id. This precludes removal to federal court under the "well-pleaded complaint rule." Metropolitan Life Ins. Co. v. Taylor, 481 U.S. 58, 63 (1987).

"Complete preemption" is an exception to the "well-pleaded complaint rule." Dukes, 57 F.3d at 354. "Complete preemption" allows a cause of action to be removed despite the absence of a federal question on the face of Plaintiff's well-pleaded complaint. Id. Claims within the scope of section 502(a)(1)(B) of ERISA are completely preempted, and removable

without reference to Plaintiff's complaint. Id. (citing Metropolitan Life, 481 U.S. at 66). Section 502(a)(1)(B)provides in relevant part:

> A civil action may be brought -
> (1) by a participant or beneficiary -
> . . . .
> (B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan. . . .

29 U.S.C. § 1132(a)(1)(B). If Katlin's claims fall within the scope of section 502(a)(1)(B) they are completely preempted and removal was proper.

Therefore, the issue before the court is whether Katlin is seeking "to recover benefits due to him under the terms of his plan." 29 U.S.C. § 1132(a)(1)(B). Katlin does not claim he was denied benefits but rather claims Keystone negligently provided him with benefits. Katlin is seeking damages, not benefits. Had Keystone refused to pay for psychiatric care, a denial of benefits would have resulted. In fact, if Keystone had denied benefits, Katlin would not have been treated by Tremoglie at all, and a completely different lawsuit, one within the scope of section 502(a)(1)(B), would have arisen.

Defendants point to two sentences from the Dukes opinion that they contend require a different result in this case:

> "There may well be cases in which the quality of a patient's medical care or the skills of the personnel provided to administer that care will be so low that the treatment received simply will not qualify as health care at all. In such a case, it well may be appropriate to conclude that the plan participant or beneficiary has been denied benefits due

under the plan."

Dukes, 57 F.3d at 358.

These phrases are difficult to interpret, but the meaning that Defendants would give to them runs counter to the balance of the Dukes opinion. Dukes clearly holds that claims regarding the quality of health care provided are not within the scope of 502(a)(1)(B). The meaning of this dictum is unclear and will not be construed to undercut the entire Dukes opinion. Id.

II. Conclusion.

Although Katlin's claims are preempted by section 514(a), they are not completely preempted under section 502(a)(1))B), therefore, removal from the state court was improper. Katlin's claims address the quality of benefits received. Katlin does not claim he was denied benefits due under the plan. Because Katlin's claims do not fit within the scope of section 502(a)(1)(B), the doctrine of complete preemption does not apply and this court lacks proper jurisdiction. An appropriate order follows:

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ORDER

AND NOW, this 3rd day of September, 1997, upon consideration of Plaintiff's Motion to Remand, and all responses thereto, it is hereby ORDERED:

1. Plaintiff's motion is GRANTED.
2. This case is remanded to the Philadelphia Court of Common Pleas.

BY THE COURT:

_____
ROBERT F. KELLY J.